

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Comcast Cable Communications, LLC)	
)	
)	MB 13-168, CSR-8810-E
Petition For Determination of Effective Competition in:)	(Also filed in MB 12-1)
6 Massachusetts Franchise Areas (Including Hull, MA -)	
MA0205))	

**OPPOSITION OF THE TOWN OF HULL, MA
TO
COMCAST CABLE COMMUNICATIONS, LLC'S
PETITION FOR SPECIAL RELIEF
[FOR DETERMINATION OF EFFECTIVE COMPETITION]**

The Town of Hull hereby files this Opposition To Comcast Cable Communications, LLC's ("Comcast") Petition For Special Relief for a determination that the Town of Hull is subject to effective competition and therefore exempt from any rate regulation imposed pursuant to Section 623 of the Communications Act of 1934 (the "Act"). The basis for the Town's opposition and the reason the Commission should and must deny Comcast's Petition, has also been set out in the Opposition filed with the Commission on July 25, 2013 by the Massachusetts Department of Telecommunications and Cable ("Massachusetts DTC" or "DTC") with respect to the subject proceeding, as well as a number of other petitions by Comcast for determinations of effective competition at or around this time.

In its Petition Comcast contends that it satisfies the "50/15" or "Competing Provider Test" in the Town of Hull, as well as in other franchise areas. Comcast writes that that "pursuant to Section 623(a)(2) of the Act and Section 76.905(b)(2) of the

Commission's rules, (the "Competing Provider Test"), a cable system will be deemed subject to effective competition if:

- (i) The franchise area is served by at least two unaffiliated multichannel video programming distributors, each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and
- (ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.

As also noted by the Massachusetts DTC, however, Comcast's data shows (although Comcast does not specifically calculate, nor show) a total multichannel video penetration rate for the Town of Hull of over 100 percent of the occupied household units. In fact, the data submitted by Comcast shows a multichannel video penetration rate of 105.5%.

DBS Subscribers	Verizon Subscribers	Comcast Subscribers	Total MVPD Subscribers	Households	Total MVPD Percentage
167	1,785	2,934	4,886	4,630	105.5% ¹

As the Massachusetts DCT correctly notes and writes in its Opposition, a penetration rate in excess of 100% "in and of itself has caused the FCC to reject effective competition petitions in the past." The DTC further notes that "[t]he FCC stated that data yielding penetration rates that exceed 100 percent of the households in a franchise area are

¹ For DBS subscribers see Exhibits 6 and 8 of the Comcast Petition; for Verizon Subscribers see Exhibits 4 and 8 of Comcast's Petitioner; and for Comcast Subscribers see 2012 subscriber counts available at the web site of the Massachusetts DTC <http://www.mass.gov/ocabr/docs/dtc/catv/stats/subscriber-counts-2012.xls>, also referenced in the Massachusetts DTC's Opposition. This web site, produced and maintained by the Massachusetts DTC, is also the reference source for Comcast's listing of Verizon subscriber numbers contained in Exhibit 4 of its subject Petition. For household data, and more specifically occupied household data see Exhibit 7 of Comcast's Petition (data from the U.S. Census Bureau).

“obviously inaccurate,”² adding later that it would dismiss such evidence regardless of its format.³ In fact, the DTC further notes that “the FCC denied an effective competition petition where the petitioner claimed that penetration rates exceeded 100 percent in some franchise areas.”⁴ In the *Memorandum Opinion & Order* in its determination on the Time Warner petition, the FCC wrote that:

Attachment C, however, lists 226 Communities in which Petitioner’s data show that the combined subscribership of the DBS Providers and Petitioner exceed 100 percent of the households. ... This data is obviously inaccurate and unreliable. [Emphasis added.] [Citation in footnote 4, below.]

In another Commission determination, *In the Matter of Time Warner Cable Inc. Petition for Determination of Effective Competition in 105 Franchise Areas in Ohio*, CSR-7799-E, *Memorandum Opinion & Order*, the Commission rejected Time Warner’s Petition for a determination of effective competition in all thirteen (13) communities where the combined subscribership exceeded 100 percent of the households, no matter how little above 100 percent the number (ratio) was.⁵ (See Attachment B of that Decision). The Commission denied Time Warner’s petition for the following Ohio

² Citing *Comm’n Announces New Standards for Showings of Effective Competition for Cable Serv.*, DA 08-1892, *Pub. Notice* (rel. Aug. 13, 2008).

³ Citing *Comm’n Clarifies Standards for Evidence of Competing Provider Effective Competition for Cable Serv.*, DA 09-1361, *Pub. Notice* (rel. June 18, 2009) (declaring that the FCC will “dismiss evidence that shows obviously inaccurate . . . levels of subscription regardless of the format of such evidence.”).

⁴ Citing *In the Matter of Time Warner Cable Inc. & Time Warner Entm’t-Advance Newhouse P’ship* (25 Petitions in Various Cmtys. in N.Y. & Pa.), CSR-7243-E, et al., DA 08-1893, *Memorandum Opinion & Order*, ¶ 10 (rel. Aug. 13, 2008), *recons. denied*, DA 08-4265 (rel. Nov. 7, 2008).

⁵ Of course, in some of the other communities also rejected in that determination by the Commission, the number of total subscribers in excess of number of households were significantly larger (i.e. Clay Township), but the relevant point is that the Commission rejected the petition for all communities in excess of 100%, regardless of how little in excess of 100% the numbers were. As the Commission noted, the cable operator bears the burden of rebutting the presumption that effective competition does not exist.” *Id.*

communities based on the below referenced ratio of total subscribers to occupied households:

<u>Community</u>	<u>Sum of Subscribers</u>	<u>Households</u>
Chatfield	89.75	86
Clyde	2,304.32	2,304
McComb	590.66	587
Wayne	315.49	313

As explained by the Commission:

Petitioners stated number of its own subscribers and the DBS providers' subscribers show that in the Attachment B Communities, their combined subscribership exceeds 100 percent of the households there. ... This evidence is obviously inaccurate and unreliable. We cannot disregard these inaccuracies, which Petitioner should have corrected before filing or brought to our attention. Accordingly, we deny the petition as to the Attachment B Communities without prejudice to their being re-filed with credible data. [Emphasis added.]

Conclusion

Comcast has not met the burden placed upon it by the Commissions regulations.⁶ Accordingly, the Town of Hull respectfully requests that the Commission deny Comcast's Petition For Special Relief for a determination that the Town of Hull is subject to effective competition.

⁶ 47 C.F.R. §§ 76.906 and 907.

Respectfully submitted,

TOWN OF HULL, MASSACHUSETTS

By:

A handwritten signature in dark ink, appearing to read "William H. Solomon", written over a horizontal line.

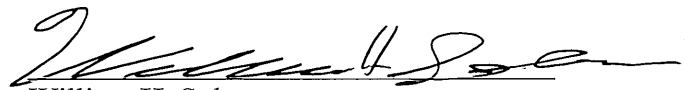
William H. Solomon,
Special Cable Counsel
319 Main Street
Stoneham, Massachusetts 02180
(781) 438-4543

Dated: August 6, 2013

CERTIFICATION PURSAUNT TO 47 C.F.R. 76.6 § (a)(4)

The undersigned signatory has read (and written) the foregoing Opposition and, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or in a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William H. Solomon', written over a horizontal line.

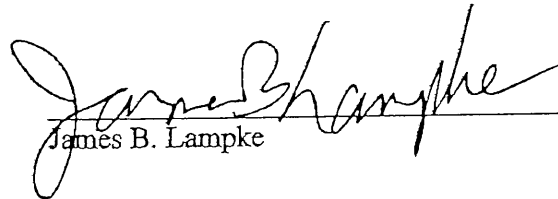
William H. Solomon
Special Cable Counsel
319 Main Street
Stoneham, MA 02180
(781) 438-4543

Dated: August 6, 2013

DECLARATION OF JAMES B. LAMPKE

I, James B. Lampke, declare, under penalty of perjury that:

1. I am the Town Counsel for the Town of Hull, Massachusetts. I have served in that position since 1978. As Town Counsel, I serve the Board of Selectmen which is the cable television "Issuing Authority" (franchising authority) for the Town of Hull, pursuant to Chapter 166A of the Massachusetts General Laws. As Town Counsel, I have been directly involved with, and I am informed and knowledgeable regarding cable television related matters and issues, including matters relevant to the subject Petition of Comcast and the within Opposition. Additionally, I periodically serve as the Acting Town Manager in the absence of the Town Manager, such as during a vacation week, and I am currently serving in that capacity. I am familiar with the Town of Hull and have resided in the Town for sixty-two years.
2. I have read the foregoing Opposition To Comcast Cable Communications, LLC's Petition For Special Relief [For Determination of Effective Competition], and I am familiar with the contents thereof and the matters referred to therein.
3. The material facts contained within the Opposition are true and correct to the best of my knowledge, information and belief.


James B. Lampke

Date: August 6, 2013

CERTIFICATE OF SERVICE

I, William H. Solomon, do hereby certify on this 6th day of August, 2013 that a true and correct copy of the foregoing Opposition Of The Town of Hull, MA To Comcast Cable Communications, LLC's Petition For Special Relief [For Determination of Effective Competition] has been sent by first class mail and electronic mail to:


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with a copy sent by e-mail to:

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